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AUTHOR Evers, Irving C.
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ABSTRACT

This speech, through an analysis of significant court cases, discusses the rights of married students. The cases analyzed center around the application of due process and equal protection rights to married students. Rights of married students that are discussed include the right to attend school and the right to participate in extracurricular activities. The author also discusses the necessity of proving that a married student has an undesirable influence on other students. A related document, EA 004 366, discusses the rights of pregnant students and pregnant employees. (JF)

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THE LEGAL RIGHTS OF MARRIED STUDENTS

by

IRVING C. EVERS, ESQ.
Immediate Past President

NEW JERSEY ASSOCIATION OF SCHOOL ATTORNEYS

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EA 004 365

Before getting into the heart of the subject matter that has been assigned to me for discussion this afternoon, I think it only fitting and proper that we review, preliminarily, certain observations and comments made in the landmark decision of Tinker v Des Moines Independent Community School District, et al.[1] That case was decided by the United States Supreme Court on February 24, 1969 and has been cited considerably in various courts of this country not only in the United States Courts but State Courts as well as representing a clear-cut statement of rights of students.

It is not necessary to go into the method by which this case reached the United States Supreme Court, but it is important to review the comments of Mr. Justice Fortas, who delivered the opinion for the majority of the court.

Almost at the start of the decision Justice Fortas made the following comments: "First Amendment rights applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate. This has been the unmistakable holding of this court for almost 50 years."

In commenting upon how far Boards of Education may go in dealing with students, Mr. Justice Fortas made reference to the

language in the case of West Virginia v Barnette 319 U.S. 624 (1943) and quoted the following from that decision:

"The 14th Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures, Boards of Education not excepted. These have, of course, important, delicate and highly discretionary functions but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principals of our Government as mere platitudes." Further on in the Tinker decision, Justice Fortas went on to use the following language:

"In our system, State operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in schcol as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of Constitutionally-valid reasons to regulate their

speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend'".

The importance of protecting the constitutional rights of students was again noted with considerable interest by Mr. Justice Fortas when he quoted some language from the opinion of Mr. Justice Brennan speaking for the Supreme Court of the United States in Keyishian v. Board of Regents, 385 U.S. 589,603, where Mr. Justice Brennan said:

"The vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools ***The classroom is peculiarly the 'market-place of ideas'. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection'".

While there may be some who may seek to argue that the language in the Tinker case, while applicable to freedom of speech, should in no wise be considered as applicable to the rights of married students, it appears to me that that argument lacks vitality. In the cases that I have had the opportunity to examine, there are references to the constitutional rights of students which have been mentioned by the Courts in considering attempts

to regulate their attendance at schools on the grounds that students were married.

It is also interesting to note that in a publication put out by the American Civil Liberties Union "Academic Freedom in the Secondary Schools", we find the following language at Page 20:

"The right to an education provided for all students by law should not be abrogated for a particular student because of marriage or pregnancy unless there is compelling evidence that his or her presence in the classroom or school does, in fact, disrupt or impair the educational process of other students. This includes the right to participate in all the activities of the school. If temporary or permanent separation from the school should be warranted, the education provided elsewhere should be qualitatively and quantitively equivalent to that of the regular school, so far as is practicable."

Perhaps one final word of caution would appear to be in order before getting to the discussion of the cases that concern the rights of married students, and that is the thought that under civil rights laws there are provisions for damages to be awarded to individuals who are able to establish that their civil rights have, in fact, been violated by individuals such as school administrators or members of boards of education. It would be my suggestion, therefore that before any action is

taken by any board of education, to attempt to deprive a student of any of his rights or her rights by reason of the fact that the student happens to be married, that a more careful look should be taken at the possible civil rights laws that might be invoked. Before any action is taken the wisest thing to do would be for boards to certainly confer with their attorneys to see whether or not the attempt to invoke any such action might possibly have consequences of a serious nature to the members of the board, to the administrators, and to the boards as a whole.

With those preliminary observations in mind, let us now draw our attention to a discussion of some of the cases that have come down over the years dealing with the questions of the rights of married students.

It seems altogether fitting and proper that the first case to be discussed is Nutt v Board of Education, the City of Goodland[2] decided by the Supreme Court of Kansas in 1929. In that case a particular student was informed that she would no longer be allowed to attend school because she was a married woman. A child had been born to this particular student and there were no other married women enrolled in the high school.

Affidavits filed in the case showed that the student in question had lived with her husband for a short time only, that the child was not prematurely born; that after the separation from her husband she attended a school at Edson and that she

associated with other men several times each week during her attendance there although married. She even went so far as to persuade another girl, 16 years of age, to accompany her to a public dance. Affidavits were produced on behalf of the student stating that she was a girl of good moral character. In holding that the student in question had a right to attend school, the Court said:

"There is no controversy as to a minor being entitled to an education in the public schools. The question of her statutory right to enter school is not questioned provided, of course, her moral standards are not objectionable. The Constitutional and statutory right of every child to attend public schools is subject always to a reasonable regulation and a child who is of a licentious or immoral character may be refused admission.*** However, under the general public policy a student should not be excluded from attending school unless it is clear that his conduct comes within the rules just enumerated. It has been held that the directors of a school district had no right to enforce a rule authorizing the expulsion of a pupil for attending social parties where the pupil had returned to his home and his parents had approved of attending such parties.

"The public schools are for the benefit of children within school age, and efficiency ought to be the sole object of those charged with the power and privilege of managing and conducting

same, and while great care should be taken to preserve order and proper discipline, it is proper also to see that no one within school age should be denied the privilege of attending school unless it is clear that the public interest demands expulsion of such pupils or a denial of his right to attend."

Although those observations were voiced in 1929 and came from a court in Kansas, it certainly seems to me as though they are particularly apropos today and they certainly stand the test of time.

In the same year that the Courts of Kansas dealt with the problem, the Supreme Court of Mississippi rendered a decision which was in keeping with that rendered by the Supreme Court of Kansas.

In the case of McLeod et al v State[3] the school trustees adopted an ordinance barring married persons, otherwise eligible, from attending public schools. An attack was made on that ordinance and the Supreme Court of Mississippi had the following comments to make with reference to it:

"The question, therefore, is whether or not the ordinance in question is so unreasonable and unjust as to amount to an abuse of discretion in its adoption. No case directly in point is referred to in the briefs. The ordinance is based alone upon the ground that the admission of married children as pupils in the public schools of Moss Point would be detrimental to the good government and usefulness of the schools. It is argued that marriage emanci-

pates a child from all parental control of its conduct, as well as such control by the school authorities; and that the marriage relation brings about views of life which should not be known to unmarried children; that a married child in the public schools will make known to it associates in schools such views, which will therefore be detrimental to the welfare of the school. We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating, rather than demoralizing. Pupils associating in school with a child occupying such a relation, it seems would be benefited instead of harmed."

Not all courts have adopted the views as set forth by the Courts of Kansas and Mississippi. In the State of Tennessee a different approach was taken in State v. Marion County Board of Education[4], decided by the Supreme Court of Tennessee in 1957. The Chancery Court denied the relief sought and an appeal was taken to the Supreme Court of Tennessee. That Court held that the evidence showed that married students generally had, for a few months immediately following marriage, a detrimental influence upon fellow students and a detrimental effect upon progress and efficiency of school; and it was held that the county school board's resolution, that students marrying during the term should be expelled for the remainder of the term and that students marrying during vacation period should not be allowed to attend

school during term next succeeding, was reasonable.

In Kissick v Garland Independent School District,[5] the Court of Civil Appeals in 1959 held that a resolution of a school district providing that married students or previously married students should be restricted wholly to classroom work and barring them from participating in athletics or other exhibitions and prohibiting them from holding class offices or other positions of honor other than academic honors such as valedictorian and salutatorian was not arbitrary, capricious, discriminatory, or unreasonable as applied to a high school student who was previously married, who had been a letter man on the football team in prior year and who was looking to an athletic scholarship and college.

It was argued in that case that the resolution was violative of public policy in that it penalized persons because of marriage. That argument was rejected by the Court with the observation that there were certain provisions of Texas Law that regulated ages at which individuals could marry; that it was a criminal offense for the County Clerk to issue a marriage license to males under 21 or females under 18 without the consent of the parents or guardians; and there was a further observation to the concern of the Legislature over "teenage" marriages, there being a prohibition of such marriages except upon the consent and authority expressly given by the parent or guardian of such under-

age applicants in the presence of the authority issuing such license.

With reference to the argument that it was indeed the policy of the law to look with favor upon marriage and to seek in all lawful ways to uphold the most important of social institutions; every intendment being in favor of matrimony, the Court noted that that particular principal was applicable to marriages by persons of lawful age. The Court noted that the Legislative policy was directly contrary to the upholding of marriage where the marriage was between parties who were underage.

As to Constitutional arguments advanced, which were not set forth in detail, the Court simply held that sufficient grounds existed for over-ruling those arguments.

In the case of Cochrane v Board of Education of Mesick Consolidated School District,[6] decided by the Supreme Court of Michigan in 1960, an action was instituted when two football players were barred from participating in the sport following their marriages.

In that particular case, the State Attorney General had intervened on behalf of the students urging that the Board's action was punitive and designed to humiliate and ridicule married students thereby discouraging other student marriages. The Attorney General advanced an argument similar to that suggested in the Kissick case, namely, that the philosophy of the law was to

uphold the validity of the state of matrimony. He noted in his argument that if there were any concern about that particular policy then the remedy was to change the age limit for marriages but not to take action against students by Boards through interference with the preogatives of the Legislature, the parents and the church. A majority of the Justices in that particular case voted against the legality of the Board rule by a 4 to 3 vote, but the District Court decision supporting the Board of Education was not over-ruled, because the Court had split evenly 4 to 4 on the question as to whether or not the issue before it was moot. At the time the Plaintiff had already graduated from high school. Oddly enough, the District Court decision was allowed to stand purely on a procedural point although on the substantive issue the legality of the rule prohibiting the participation of married students in extra-curricular activities was held by a majority of the Justices to be unenforceable.

In State Ex rel. Baker v Stevenson,[7] an Ohio Court upheld a rule which prohibited married students from participating in extra-curricular activities. That case involved a 16-year old senior who was a member of the basketball team who had won the State Championship the preceding season. The Board adopted the rule which was to go into effect at the beginning of the 1962-63 school year. The student in question was married in February of 1962.

In upholding the rule in question, the Court stated that where married students are in a position of idolization, the more desirous is the group to mimic.

In answer to the argument that the rule penalized married persons, the Court here noted that Ohio public policy was not favorable to "underage" marriages since consent for males under the age of 18 years and females under the age of 16 years must be given by the Juvenile Judge. Said the Court:

"Any policy which is directed toward making juvenile marriages unpopular and to be avoided should have the general public's whole-hearted approval and support."

The argument was raised that there was a possibility that the student may have won a scholarship if he had been permitted to play basketball during his final year of high school. The Court stated that it didn't necessarily follow that his abstention during his senior year would diminish his athletic prospects. Also rejected by the Court was an opinion by the State Attorney General that "a Board of Education may not lawfully adopt a regulation prohibiting married students from participation in extra-curricular activities."

In Starkey v Board of Education of Davis County School District,[8] decided by the Supreme Court of Utah in 1963, James Harold Starkey, who was a senior in the Davis County High School during the school year 1962-63, was vice president of the Boys Associa-

tion; on the usher squad, an honorary group; a member of the wrestling team; and expected to be on the baseball team. It was stipulated that he was barred from participating in the above-named activities as a result of the enforcement of a resolution referred to because of his marriage during the 1962 Christmas recess.

Starkey challenged the validity of the resolution and its application to him on the ground that it deprived him of rights guaranteed under the constitutions of the United States and the State of Utah and particularly that section of the Utah constituiton which provides for the maintenance of a uniform system of public schools, which shall be open to all children of the State. He contended that the resolution deprived him of property without due process of law as guaranteed by the constitution of the State of Utah and by the 14th Amendment of the United States Constitution and the Equal Protection Clauses of the Utah constitution and the 14th Amendment of the United States Constitution.

The Court rejected all of the arguments urged by the Plaintiff in this action. The Court held that the extra-curricular activities in which the Plaintiff had participated in and desired to continue to participate in were not part of the school program required by the Constitution of Utah and but were activities carried on under the discretionary powers granted to the

Board of Education. Said the Court:

"It is not for the courts to be concerned with the wisdom or propriety of the resolution as to its social desirability, nor whether it best serves the objectives of education, nor with the convenience or inconvenience of its application to the Plaintiff in his particular circumstances. So long as the resolution is deemed by the Board of Education to serve the purpose of best promoting the objectives of the school and the standards for eligibility are based upon uniformly applied classifications which bear some reasonable relationship to the objectives, it cannot be said to be capricious, arbitrary or unjustly discriminatory." Continuing, the Court said further:

"The reasons given by the Board in justification of its resolution are certainly not entirely without merit. It is asserted that one of its main concerns is the problem of "drop out" of large numbers of high school students before completing that phase of their education; that the increased number of teen-age marriages between high school students is considered to be one of the contributing factors to this problem; and that such marriages should be discouraged; and further that when they do occur it is desirable that the parties devote more time and attention to the serious responsibilities involved rather than spending the extra time needed for extra-curricular school activities."

Interesting indeed is the observation made by the Court

with respect to extra-curricular activities. Said the Court:

"We have no disagreement with the proposition advocated that all students attending school should be accorded equal privileges and advantages. But the participation in extra-curricular activities must necessarily be subject to regulations as to eligibility. Engaging in them is a privilege which may be claimed only in accordance with the standards set up for participation. It is conceded, as Plaintiff insists, that he has a constitutional right both to attend school and to get married. But he has no "right" to compel the Board of Education to exercise its discretion to his personal advantage so he can participate in the named activities."

In Board of Directors of the Independent School District Of Waterloo, v Green [9] decided by the Supreme Court of Iowa in 1967, an action was brought to enjoin enforcement of school board rule barring participation in extra-curricular activities by married pupils. The lower Court granted the relief sought but the Supreme Court of Iowa held that the rule was based on reasonable grounds and that students were not denied equal protection of the laws.

In its opinion, the Court made comment on what was urged to be the reasons behind the adoption of the regulation in question. It was urged that married students need to spend time with their families in order that the marriage will have a better

chance of being successful; that married students are more likely to drop out of school. Hence, marriage should be discouraged among teenage students; that married students are more likely to have undesirable influences on other students during the informal extra-curricular activities; that the personal relationships of married students are different from those of non-married students. Non-married students can be unduly influenced as a result of relationships with married students; that married students may create school moral and disciplinary problems, particularly in the informal extra-curricular activities where supervision is more difficult.

With reference to those factors that had been urged upon the Court, the Court said:

"We need not engage in any detailed analysis of these motivating factors. While some of them may approach the area of paternalism, other are clearly within the realm of control granted by law to the school boards of this State".

In Carrollton-Farmers Branch Independent School District v Knight [10], decided by the Court of Civil Appeals of Texas in 1967, some students who were suspended from high school because of their marriage sought reinstatement. The lower Court issued a temporary injunction restraining the school from enforcing the suspension order, and the school district appealed. The Court of Civil Appeals held that issuance of the temporary injunction

was not an abuse of discretion where evidence established that presence and attendance of married students at high school did not cause turmoil, unrest and upheaval against education by fellow students and that ability of students to study was not affected by the marriage, and that a resolution suspending the students from school for marriage had not been uniformly applied.

The Court held that marriage alone is not a proper ground for a school district to suspend a student from attending school for scholastic purposes only.

In Johnson v Board of Education Borough of Paulsboro [11], the United States District Court for the District of New Jersey had occasion to consider an attack made on Policy #5131 adopted by the Board of Education of the Borough of Paulsboro which policy provided as follows:

"Any married student or parent shall be refused participation in extra-curricular activities. When a student marries he assumes the responsibilities of an adult and thereby loses the right and privileges of a school youngster."

"This regulation regarding extra-curricular activities should not be construed to interfere with a married student continuing his education."

By reason of the ruling in question, Paula Johnson was denied permission to participate in the high school athletic program and also in a coming Senior Class trip to Washington,D.C.

Upon receipt of notification that the policy barred her from the participation indicated, she immediately filed an action with the United States District Court for the District of New Jersey.

The questions presented to the Court for its consideration were the following:

1. Whether the Policy #5131 and the Defendant's actions pursuant thereto were invidiously discriminatory and deprived the Plaintiff of rights guaranteed by the Equal Protection Clause of the 14th Amendment.

2. Whether the policy and the Defendant's actions pursuant thereto were unreasonable and deprived the Plaintiff of rights guaranteed by the Freedom of Speech and Assembly Clauses of the 1st Amendment, and

3. Whether Policy #5131 and the Defendant's actions pursuant thereto were unreasonable and deprived the Plaintiff of rights guaranteed by the Due Process Clause of the 14th Amendment, and the per numbra of civil liberties guaranteed to the people by the 9th Amendment.

In a motion for judgment on the pleadings, it was stipulated between the Counsel for the respective parties as follows:

1. Policy #5131 of the Board of Education of the Borough of Paulsboro was instutied for the following reasons:

(a) Marriage brings new responsibilities with which

extra-curricular activities might interfere.

(b) The extra responsibilities, together with the extra-curricular activities, might engage the student to such an extent that he would not be able to give attention to his studies.

(c) Teenage marriages are on the increase and that such a regulation may tend to discourage same.

(d) The regulation would encourage the student to stay at home with his family.

(e) It's been proven that married students have a higher dropout rate than unmarried students and this regulation might tend to deter and discourage marriages, and, therefore, dropouts.

(f) Married students have greater ability to communicate during extra-curricular activities their potentially different moral attitudes to the unmarried students.

2. Paula Johnson, one of the Plaintiffs in said action

(a) Is nineteen years old, married and a parent;

(b) Is a resident of Paulsboro, New Jersey, subject to the jurisdiction of the Board of Education of the Borough of Paulsboro;

(c) Is a student at Paulsboro High School;

(d) Was, prior to her marriage, a participant in the girls' field hockey and basketball teams;

(e) Subsequent to her marriage, was denied participation in said activities and the Senior Class Trip to Washington, D. C., solely on the basis of Policy #5131;

(f) Is not a discipline problem nor created a disturbance at the school which has interfered with school functions;

3. Presently at Paulsboro High School there are twelve (12) seniors and three (3) juniors who are subject to Policy # 5131 and all have been denied participation in extra-curricular activities."

On April 11, 1970, an order granting the Plantiff's motion for summary judgment and denying the Defendant's cross-motion for summary judgment was signed by Judge Leonard I. Garth, which order recites the following:

1. The Court has jurisdiction over this action;

2. That Policy #5131 of the Board of Education of the Borough of Paulsboro, of the State of New Jersey, entitled "Married Students", which was revised and adopted by the Board on the 27th day of October, 1964, is hereby declared to be in derogation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States and is, therefore, unconstitutional, illegal and void;

3. That the Defendants, who are charged with the enforcement of the provisions of the aforesaid policy, their representatives, agents, employees and successors are hereby permanently

enjoined and restrained from discriminating against students as to participation in extra-curricular activities solely on the basis of said students' marital and/or parental status.

The brief that was filed on behalf of the Plaintiffs in this case is extremely interesting. In the brief there is an analysis made of most of the cases that have been already discussed by me in this talk but there was special emphasis placed in this brief upon the decisions of the Commissioner of Education in the State of New Jersey relative to the importance of extra-curricular activities and the part played by such extra-curricular activities in the education program in the State of New Jersey. In the brief it was argued that in the eyes of the Commissioner and the State Board, discrimination as to "extra-classroom" activities is as undesirable as discrimination as to scholastic activities. The Commissioner of New Jersey was quoted as saying:

"The existance of a broad and well-developed program of student activities is an essential factor in the approval and accreditation of any secondary school",

Citing Smith v Board of Education of the Borough of Paramus [12].

In connection with the argument that the regulation in question violated 1st Amendment rights, heavy reliance was placed by the Plaintiffs upon the decision of the United States Supreme

Court in the Tinker decision referred to at the outset of this talk.

Also in connection with the Constitutional argument that the regulation in question denied Plaintiff's fundamental rights guaranteed by the Due Process clause of the 14th Amendment and the penumbra of civil liberties reserved for the people in the 9th Amendment, heavy reliance was placed upon the case of Griswold v Connecticut[13] which case was cited for the proposition that the action in question invaded the zone of marital privacy.

I was unable to find any record of a formal written opinion by Judge Garth in connection with this case, but the fact that an order was entered declaring that there was a violation of Constitutional rights by reason of a regulation denying to married students the right to participate in extra-curricular activities should give all reason to pause before any such by-laws are adopted by Boards of Education.

In Willsand v Valpariso Community Schools Corporation, et al[14], decided by the United States District Court on September 1, 1971, it was held that the action of a school board in denying a married student the right to play football was a denial of Constitutional rights under the Equal Protection Clause of the 14th Amendment.

In Holt v Shelton[15], the United States District Court for the Middle District of Tennessee, held that a high school regulation that prevents married students from participating in extra-

curricular activities unconstitutionally denies such student's rights to due process of the equal protection of the laws by punishing for exercising their fundamental right to marry.

In anderson v Danyon Independent School District [16], the Court of Civil Appeals of Texas held that a school board was without authority to adopt a rule that students who marry during the school term must withdraw from school for the remainder of the school year. It was further held that a Board of Education could not deny admission to a student solely by reason of the fact that she was married.

In Butts v Unified School District #218 [17], an injunction was denied in a class action which would have forced a Board of Education to permit the student Plaintiff and other married students to participate in the athletic program of the school and in other extra-curricular activities.

As I indicated at the outset of this talk, there is always the possibility that should another Court make a determination of the violation of Constitutional rights and should an action be instituted in the Courts seeking damages for the invasion of guaranteed rights, the consequences could be serious indeed.

It would be my recommendation to those in attendance here today who may not be lawyers, to by all means, confer with Board Counsel either in connection with revising existing policies that may concern themselves with this particular question, or if there

are no such policies, then before any thought is given to adopting them, to make certain that the advice of Counsel is sought and heeded.

FOOTNOTES

1 393 U.S. 503; 89 S. Ct. 733; 21L Ed. 2d 731

2 278 P. 1065

3 122 So. 737

4 302 S.W. 2d 57

5 330 S.W. 2d 708

6 103 N.W. 2d. 569

7 189 N.E. 2d 181

8 381 P. 2d 718

9 147 N.W. 2d 854

10 418 S.W. 2d 535

11 Civ. Action 172-70

12 1968 New Jersey School Law Decisions 62; aff'd 1968 S.L.D. 69

13 381 U.S. 479; 85 S.G 1678; 14L Ed 2d 510 (1965)

14 U.S.D.C. Ind. Case #71 H 122 (NOLPE Notes Oct. 1971 P. 1)

15 40 U. S. Law Week 2741 (1972)

16 412 S.W. 2nd 387 (1967)

17 Dist. Ct. Morton Co. Kansas Case #4280 1970; (NOLPE Notes P. 4 May, 1970)